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No. 78-1634

IN THE

Supreme Court of the United States

October Term, 1978

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

v.

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF REGION 14 OF THE NATIONAL LABOR RELATIONS BOARD, *et al.*,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONSE OF PETITIONER TO SUPPLEMENTAL MEMORANDUM FOR FEDERAL RESPONDENT

MICHAEL H. GOTTESMAN
ROBERT M. WEINBERG
DAVID M. SILBERMAN
Bredhoff, Gottesman, Cohen
& Weinberg
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

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Petitioner United Steelworkers of America, AFL-CIO-CLC ("USWA"), filed this petition for a writ of certiorari to seek review of the decision of the court of appeals directing the district court to enjoin USWA from continuing a publicity campaign urging consumers not to purchase products manufactured by or patronize stores owned by respondent Pet, Inc. The appellate decision which is challenged here construed § 10(*l*) of the National Labor Relations Act to mandate such an injunction without permitting inquiry into whether USWA was likely to prevail on the

merits of its legal defenses to the respondent Regional Director's charge that USWA's publicity campaign violated § 8(b)(4) of the Act—that is, without inquiring into the merits of USWA's claim that its conduct was protected by both the publicity proviso to § 8(b)(4) and by the First Amendment. Pursuant to the terms of the appellate court's mandate, the district court issued a § 10(*l*) injunction against USWA shortly after our petition for certiorari was filed.

Respondent Regional Director has filed a Supplemental Memorandum in which he correctly reports: that on August 10, 1979, the National Labor Relations Board ("NLRB") issued its decision in the unfair labor practice proceeding involving the publicity campaign that gave rise to this action; that the NLRB found that USWA's publicity proviso defense—the merits of which the court below had precluded from the injunction inquiry—was valid and thus that the previously-enjoined publicity campaign did *not* violate § 8(b)(4); and that by virtue of the issuance of the NLRB decision, the injunction against the USWA terminated. Respondent contends that consequently the case is moot.

If, as respondent urges, the issuance of the NLRB decision moots this proceeding, the appropriate disposition here would be to vacate the opinion of the court of appeals as moot and remand the case with instructions that it be dismissed. Indeed respondent concedes that in such circumstances that would be the appropriate disposition "[i]f . . . the Court might have granted the petition but for the problem of mootness."[1] And, mootness aside, as we showed in

[1] Brief for the United States in *Velsicol Chemical Corp.* v. *United States* at 6, incorporated by reference in the Supplemental Memorandum for Federal Respondent in the instant case at 2-3.

our petition for a writ of certiorari, the questions presented in this case would warrant plenary consideration by this Court.

Accordingly, if the Court agrees with respondent that the case is moot, the judgment of the court of appeals should be vacated with instructions to dismiss the case as moot.

Respectfully submitted,

MICHAEL H. GOTTESMAN
ROBERT M. WEINBERG
DAVID M. SILBERMAN
Bredhoff, Gottesman, Cohen
& Weinberg
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036